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8 UNITED STATES DISTRICT COURT  
9 WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

10 UNITED STATES OF AMERICA, )

11 Plaintiff, )

NO. CR03-5259 FDB

12 )  
13 CHARLES FARNSWORTH, )

14 Defendant. )  
15

ORDER DENYING MOTION FOR  
CREDIT FOR PRIOR CUSTODY

16 This matter comes before the Court on Defendant's motion for credit for prior  
17 custody pursuant to 18 U.S.C. § 3585(b). The Court, having reviewed the motion,  
18 response of the United States, and the record, is fully informed and denies the motion for  
19 the reasons that follow.

20 **Introduction and Background**

21 Defendant Farnsworth was originally convicted in the District Court of Utah as a  
22 felon-in-possession of a firearm, in violation of 18 U.S.C. § 922(g)(1). He was sentenced  
23 to 120 months of imprisonment to be followed by 36 months of supervised release.  
24 Defendant's supervised release began on August 16, 2002, and his supervision transferred  
25 to this District on April 6, 2003. On March 9, 2004, while on supervised  
26 release, Farnsworth committed an armed robbery. On the following day, Defendant  
27 committed a second armed robbery. He was subsequently charged in Pierce County  
28 Superior Court

1 with two counts of Robbery in the First Degree under Washington State law. On  
2 September 30, 2004, following a bench trial, he was convicted of both  
3 robberies. The Superior Court sentenced Farnsworth to 68 months of imprisonment on  
4 each count to be served concurrently. Following an appeal, the sentence apparently was  
5 reduced to 61 months.

6 Defendant now alleges that he did not receive proper credit for time served in state  
7 custody on these offenses and requests this Court to credit the 33 days that he claims he  
8 should have received toward the 24-month sentence imposed by this Court following the  
9 revocation of his term of supervised release.

### 10 **Lack of Jurisdiction**

11 District courts do not have 'inherent authority' to reconsider sentencing orders.  
12 United States v. Barragan-Mendoza, 174 F.3d 1024, 1028 (9<sup>th</sup> Cir. 1999). Instead, the  
13 Court's authority to modify a term of imprisonment is constrained by 18 U.S.C. § 3582(c),  
14 which provides in pertinent part (emphasis added):

15 (c) Modification of an imposed term of imprisonment.- the court may not  
16 modify a term of imprisonment once it has been imposed except that-

17 (1) in any case-

18 (A) the court, upon motion of the Director of the Bureau of Prisons, may  
19 reduce the term of imprisonment ... if it finds that-

20 (I) extraordinary and compelling reasons warrant such a reduction; or

21 (ii) the defendant is at least 70 years of age, has served at least 30 years in  
22 prison, .. and a determination has been made by the Director of the Bureau of  
23 Prisons that the defendant is not a danger to the safety of any other person or  
24 the community....;

25 (B) the court may modify an imposed term of imprisonment to the extent  
26 otherwise expressly permitted by statute or by Rule 35 of the Federal Rules  
27 of Criminal Procedure; and

28 (2) in the case of a defendant who has been sentenced to a term of

1 imprisonment based on a sentencing range that has subsequently been lowered by the Sentenc  
2 the Bureau of Prisons, or on its own motion, the court may reduce the term of  
3 imprisonment....

4 By the terms of 18 U.S.C. § 3582(c), the Court is prohibited from modifying a term  
5 of imprisonment once it has been imposed unless one of the enumerated exception applies.  
6 See United States v. Penna, 319 F.3d 509, 511 (9<sup>th</sup> Cir. 2003). The first circumstance  
7 provides that the Court, upon motion of the Director of the Bureau of Prisons, may reduce  
8 the term of imprisonment after considering the factors set forth in section 3553(a) to the  
9 extent that they are applicable, if it finds that extraordinary and compelling reasons warrant  
10 such a reduction. 18 U.S.C. § 3582(c)(1)(A)(I). This exception is inapplicable to  
11 Defendant because he, rather than the Director of the Bureau of Prisons, has brought this  
12 motion. See United States v. Smartt, 129 F.3d 539, 541 (10<sup>th</sup> Cir. 1997).

13 The second exception, 18 U.S.C. § 3582(c)(1)(B), provides that "the court may  
14 modify an imposed term of imprisonment to the extent otherwise expressly permitted by  
15 statute or by Rule 35 of the Federal Rules of Criminal Procedure." This exception does not  
16 require a motion to be brought by the Director of the Bureau of Prisons. However, the  
17 Court is aware of no other statute that would expressly permit this Court to modify  
18 Defendant's term of imprisonment, and Defendant has not provided any. The rule applies  
19 only in very narrow circumstances and does not permit a court to simply reverse its  
20 decision about an appropriate sentence. United States v. Penna, 319 F.3d 509, 512 (9<sup>th</sup> Cir.  
21 2003). Federal Rule of Criminal Procedure 35 permits the Court to "correct a sentence that  
22 resulted from arithmetical, technical, or other clear error" within seven days of sentencing.  
23 Fed. R. Crim. P. 35(a). This exception does not apply at this late date. Nor does Rule  
24 35(b), which provides that the government may move for a reduction of sentence when a  
25 defendant has provided substantial assistance to the government. Fed. R. Crim. P. 35(b).  
26 The government has not so moved, and Defendant does not claim to have provided any  
27 such assistance.

28 Finally, the exception provided in 18 U.S.C. § 3582(c)(2) does not apply, as that

1 section permits a reduction in the case of a defendant who has been sentenced to a term of  
2 imprisonment based on a sentencing range that has subsequently been lowered by the  
3 Sentencing Commission. 18 U.S.C. § 3582(c)(2), by its own terms does not apply.

4 Defendant refers to 18 U.S.C. § 3585(b) as authorizing credit for prior custody.  
5 That provision provides:

6 A defendant shall be given credit toward the service of a term of imprisonment for  
7 any time he had spent in official detention prior to the date the sentence commences-

8 (1) as a result of the offense for which the sentence  
9 was imposed; or

10 (2) as a result of any other charge for which th defendant was arrested after  
11 the commission of the offense for which the sentence was imposed;  
12 that has not been credited against another sentence.

13 Credit for time served is a matter which generally falls within the province of the  
14 Bureau of Prisons under 18 U.S.C. § 3585(b). United States v. Wilson, 503 U.S. 329,  
15 332-36 (1992). As the Court in Wilson explained, "[a]fter a District Court sentences a  
16 federal offender, the Attorney General, through the Bureau of Prisons, has the  
17 responsibility for administering the sentence." Wilson, at 335. Such language presumes  
18 that the District Court will first sentence the offender--applying the relevant Sentencing  
19 Guidelines--before credit determinations shall be made by the Bureau of Prisons. See U.S.  
20 v. Checchini, 967 F.2d 348 (9<sup>th</sup> Cir. 1992).

21 In this case, Defendant has not filed any administrative remedies related to his claim  
22 during his incarceration. The computation of a prisoner's length of confinement, however,  
23 is the type of case in which the exhaustion requirement is appropriate. See Chua Han Mow  
24 v. United States, 730 F.2d 1308, 1313-14 (9<sup>th</sup> Cir. 1984). Only after he has pursued and  
25 exhausted his administrative remedies should any court entertain the argument he  
26 presents, and that argument must be presented in a motion under 28 U.S.C. § 2241. A  
27 petition for relief under 28 U.S.C. § 2241, by the terms of the statute, must be filed in the  
28 District where the prisoner is confined. Thus, Defendant Farnsworth can pursue that

1 remedy only in the Central District of California because he is confined at Lompoc.

2 **Conclusion**


3 For the above stated reasons, Defendant's request for credit for time served fails.

4 ACCORDINGLY;

5 IT IS ORDERED:

6 Defendant's motion for credit for prior custody [Dkt. # 64] is **DENIED**.

7 DATED this 27<sup>th</sup> day of October, 2008.

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12 FRANKLIN D. BURGESS  
13 UNITED STATES DISTRICT JUDGE  
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